

CHAPTER NO. 922

SENATE BILL NO. 3106

By Person

Substituted for: House Bill No. 3034

By Scroggs

AN ACT To amend Tennessee Code Annotated, Titles 8, 16, 17, 18, 24, 36, 37, 45, 50, 68 and 71, relative to the support of children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 24-7-112(a)(1), is amended by adding the following new subdivision (C) to subdivision (1):

(C) In any case, except terminations of parental rights or adoptions under Title 36 or Title 37, in which the paternity of a child is at issue and the question of parentage arises, and an agreed order or divorce decree has been entered finding that an individual is not the parent of the child, the finding shall not be entitled to preclusive effect unless the finding was based upon scientific tests to determine parentage which excluded the individual from parentage of the child in question.

SECTION 2. Tennessee Code Annotated, Title 24, Chapter 7, Part 1, is amended by adding the following as a new section:

24-7-121. Child support payment records.

(a)(1)(A) The Department of Human Services child support payment records shall be the official records for all payments which have been appropriately sent to the central collection and distribution unit pursuant to § 36-5-116.

(B) Notwithstanding any other law or rule of evidence to the contrary, a computer printout or copy, by telecopier facsimile or otherwise, an electronic mail copy or copy obtained by way of Internet access, of the child support payment screen which is generated from the Tennessee Child Support Enforcement System (TCSES) operated by the Department of Human Services or its contractors, shall be admitted into evidence as a non-hearsay, self-authenticating document in all judicial and administrative proceedings without the need for certification by a records custodian.

(2) No conclusive presumption of correctness shall attach to such record following admission, but the record shall constitute prima facie evidence of its correctness and shall be subject to rebuttal by alternative or conflicting documentary evidence of payment of the support obligation.

(b)(1) In order to implement the provisions of subsection (a) and to provide access to any other requesting persons, the Department of Human Services shall develop child support program policies and procedures which allow the department, through its staff or its contractors, to provide copies of payment information from the TCSES child support payments screens utilized by the department or its contractors to any person requesting such information. The department may provide such information in any suitable manner which provides the information necessary for judicial or administrative proceedings under subsection (a) including, but not limited to, the transmission of the hard-copy prints of the TCSES child support payment screens by facsimile or by transmission by any electronic means, and may, specifically, make such payment records available through electronic mail of the record, or by Internet access to information contained on TCSES. The department may establish a reasonable fee for such services.

(2) Any individual who knowingly alters, or who assists any individual to alter, any information obtained from the department pursuant to this section and such altered information is utilized for the purposes of establishing, enforcing, or modifying child or spousal support or defending such actions, or for the purposes of defending or prosecuting any contempt action involving child or spousal support, shall be guilty of a Class A misdemeanor.

(c) For purposes of the Uniform Interstate Family Support Act (UIFSA), in §§ 36-5-2101—36-5-2902, the Department of Human Services or its contractors shall be considered custodians of the support records subject to such act.

(d) In the event that any testimony regarding payment records is required by any state officer, employee or contractor of the Department of Human Services in any child support case, no personal appearance shall be required and such officer, employee or contractor of the Department of Human Services shall have the option to appear in person or to testify by telephonic or other suitable electronic means or by affidavit. In no event shall any state officer, employee or contractor of the Department of Human Services be required to testify in any proceeding unless such officer, employee or contractor of the Department of Human Services has personal knowledge of the facts underlying such payment record.

SECTION 3. Tennessee Code Annotated, Section 36-1-111(r), is amended by deleting the language “even if the child is not ultimately adopted” in the last sentence of subdivision (1)(A) and by substituting instead the language “pursuant to subsection (w) if the child is ultimately adopted”.

SECTION 4. Tennessee Code Annotated, Section 36-2-304(b), is amended by adding the following new subdivision:

(4) In any case, except terminations of parental rights or adoptions under Title 36 or Title 37, in which the paternity of a child is at issue and an agreed order or divorce decree has been entered finding that an individual is not the parent of the child, the finding shall not be entitled to preclusive effect unless the finding was based upon

scientific tests to determine parentage which excluded the individual from parentage of the child in question.

SECTION 5. Tennessee Code Annotated, Section 36-5-101(e), is amended by deleting the second and third sentences of subdivision (e)(2), and by deleting the second sentence of subdivision (e)(3).

SECTION 6. Tennessee Code Annotated, Section 36-5-101, is amended by adding the following new subsection:

(q)(1) Notwithstanding any other provision of law to the contrary, neither the Department of Human Services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, nor any applicant for either public assistance in this or any other state or territory or for Title IV-D child support services from the Department of Human Services or any other Title IV-D agency in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal that the caretaker of the child for whom child support is sought is vested with any more than physical custody of the subject child or children in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(2) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation in such cases, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

SECTION 7. Tennessee Code Annotated, Section 36-5-101, is amended by adding a new subsection (r):

(r) In any Title IV-D case, if the court grants relief, whether in whole or in part, to the Department of Human Services or to the department's Title IV-D contractor or to any applicant for Title IV-D child support services, the court shall not tax any court costs against the department, the Title IV-D contractor or against any applicant for child support services. The court shall not award attorneys fees against the department, the Title IV-D contractor or against any applicant for child support services unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct. This provision is not intended to limit the discretion of the courts to tax costs to the individual parties on non-Title IV-D issues such as custody or visitation.

SECTION 8. Tennessee Code Annotated, Section 36-5-101, is amended by adding the following new subsection:

(s) The order of any court or administrative tribunal directing that an obligor pay a sum certain to reduce any support arrearage shall not preclude the use by the Department of Human Services or its contractors in the Title IV-D child support program of any other administrative means of collecting the remaining balance of the outstanding arrearage including, but not limited to, income tax refund intercepts, financial institution

collections, enforcement of liens, or any other method authorized by law. The use of any additional administrative means of collection by the department or its contractors in the Title IV-D child support program is expressly authorized to reduce any portion, or all, of the outstanding balance of support as shown by the department's records, and any order of the court or administrative tribunal to the contrary is without any effect whatsoever, except for such appeal as may lie from the implementation of the administrative procedure which is used to reduce the arrearage.

SECTION 9. Tennessee Code Annotated, Section 36-5-101, is amended by adding the following new subsection:

(t) No provision, finding of fact or conclusion of law in a final decree of divorce or annulment or other declaration of invalidity of a marriage which provides that the husband is not the father of a child born to the wife during the marriage or within three hundred (300) days of the entry of the final decree or which names another person as the father of such child shall be given preclusive effect unless scientific tests to determine parentage are first performed and the results of the test which exclude the husband from parentage of the child or children or which establishes paternity in another person are admitted into evidence. The results of such parentage testing shall only be admitted into evidence in accordance with the procedures established in § 24-7-112.

SECTION 10. Tennessee Code Annotated, Section 36-5-401(3), is amended by inserting the punctuation and language, “, to review the administrative hearing decisions of the Department of Human Services pursuant to § 36-5-1003” immediately after the language “to enforce child support”.

SECTION 11. Tennessee Code Annotated, Section 36-5-405, is amended by deleting the last sentences of subdivisions (c) and (d) in each subsection in their entireties and by substituting instead, in each subdivision, the following:

If a petition is for contempt, either the referee or the judge may issue an attachment for the arrest of the respondent with a bond.

SECTION 12. Tennessee Code Annotated, Section 36-5-405(h), is amended by deleting the last sentence in its entirety and by substituting instead the following:

Unless the judge orders otherwise, any recommendation of the referee shall be in effect pending rehearing or approval by the court.

SECTION 13. Tennessee Code Annotated, Section 36-5-501(a), is amended by deleting subdivision (3) in its entirety and by substituting instead the following:

(3)(A) When health insurance is required to be provided by an employee pursuant to a court or administrative order, the employer, the health insurance provider, the plan administrator or such other entity that provides health insurance, upon receipt of an income assignment on such employee, which appears regular on its face and which requires a child to be enrolled in a health insurance plan, shall:

(1) allow claims to be filed by the custodial parent or by the state;

(2) provide the custodial parent or the state with all necessary forms and information and enrollment documents necessary to submit claims on behalf of the child or children;

(3) send the explanation of benefit statements to both the custodial parent as well as the employee; and

(4) shall send reimbursement to the custodial parent or legal guardian for expenses paid by the custodial parent or legal guardian.

(B) The employer, after receiving an income assignment containing a health insurance form promulgated by the department or any form required by the federal government shall immediately provide a copy of the income assignment to the appropriate health insurance provider or other entity that is responsible for enrollment of the child or children. The employer, the health insurance provider or such other entity shall have forty (40) days in which to enroll the child or children in the appropriate plan subject to the employee's right to appeal pursuant to Section 36-5-1001, et seq.

SECTION 14. Tennessee Code Annotated, Section 36-5-501(b)(3), is amended by deleting the language "(3) In addition to any other required or pertinent information, all notices of assignment sent to the obligor pursuant to this section shall include:" and by substituting instead the following language:

(3) In addition to any other required or pertinent information, all notices of assignment sent to the obligor who resides in this state pursuant to this section shall include:

SECTION 15. Tennessee Code Annotated, Section 36-5-501(b), is amended by deleting subdivisions (3)(E) and (3)(F) in their entireties.

SECTION 16. Tennessee Code Annotated, Section 36-5-501(b), is amended by adding the following as a new subdivision (5):

(5) The payment of child support through the Centralized Collection and Disbursement Unit established pursuant to § 36-5-116 does not establish the case as a Title IV-D case unless the case otherwise meets the criteria of § 71-3-124 for a case in which the Department of Human Services will provide child support services to an assignor of support rights or to any person who has otherwise applied for such services.

SECTION 17. Tennessee Code Annotated, Section 36-5-503(a)(2), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) If there are children to whom the obligor is still obligated to pay support, though a change of circumstances has occurred as a result of the discontinuation of the obligation to at least one (1) child, the obligor may not seek termination of the income assignment order, but must seek modification of the support order. Upon obtaining modification of the support order, the clerk of court or the department or its contractors shall issue a modified income assignment.

SECTION 18. Tennessee Code Annotated, Section 36-5-503(a)(4), is amended by adding the language “or the Department of Human Services or its contractor in Title IV-D cases” immediately following the language “The clerk of the court”.

SECTION 19. Tennessee Code Annotated, Section 36-5-503(a), is amended by adding the following as a new subdivision (5):

(5)(A) In Title IV-D cases, when the Department of Human Services or its contractor is informed or otherwise determines that the conditions of § 36-5-503(a)(1) have been met, then the department or its contractor may administratively terminate or modify the income assignment order to reflect the change in circumstances pursuant to the child support guidelines. In all other circumstances, modification or termination of an income assignment shall be obtained by court order.

(B) In cases where an income assignment order may be terminated or modified by administrative order, the department or its contractor shall notify both the obligor, or other payer, and the obligee of the proposed action with respect to the termination or modification action. The notice shall give both the obligor and the obligee fifteen (15) days in which to appeal the proposed action, pursuant to the appeal provisions of Chapter 5, Part 10 of this title.

SECTION 20. Tennessee Code Annotated, Section 36-5-503(b), is amended by deleting the language “Each parent or other individual having custody of a child who is receiving support payments under an income assignment order shall notify the clerk at such time as any of the following occur:”, and by substituting instead the language “Each parent or other individual having custody of a child who is receiving support payments under an income assignment order shall notify the clerk, or the Department of Human Services or its contractor in Title IV-D cases, at such time as any of the following occur:”

SECTION 21. Tennessee Code Annotated, Section 36-5-503, is amended by deleting subsections (c) and (d) in their entireties and by substituting instead the following:

(c)(1) The obligor parent may also seek termination or modification of a support order when the whereabouts of the obligee parent and child(ren) are unknown and the clerk of the court, or the Department of Human Services or its contractor in Title IV-D cases, has been unable to forward past payments, and all arrearages owed to the State of Tennessee as a result of the custodian’s receipt of public assistance have been paid.

(2) The obligor parent may either file a motion for termination or seek modification of the child support order when support payments equal to the amount due within one (1) month have been returned to the Office of the Clerk, or to the Department of Human Services or its contractor in Title IV-D cases, and all reasonable means to locate the obligee parent and child(ren) have been exhausted. The clerk of the court, or the Department of Human Services or its contractor in Title IV-D cases, shall notify the obligor parent that such payments have been returned to the clerk, or to the Department of Human Services or its contractor in Title IV-D cases. The obligor parent must submit an affidavit verifying that such obligor parent has exhausted reasonable efforts to locate the obligee parent and children.

(d) When a motion to terminate is filed, the clerk of the court shall proceed to set a hearing and serve the parties as provided in § 36-5-405. Upon receipt of a notice from the custodial parent or individual in accordance with subsection (b), or based upon the department's own records, the clerk or the Department of Human Services or its contractor in Title IV-D cases shall determine whether the income assignment order includes support for any other child or children and whether there are any accumulated arrearages due which have not been satisfied. If there are no other children and no arrearages, the clerk, or the Department of Human Services or its contractor in Title IV-D cases, after notification to the parties, shall notify the employer, person, corporation or institution withholding support that the income assignment is terminated. If there are other children and/or accumulated arrearages, the clerk or the Department of Human Services or its contractor in Title IV-D cases, after notification to the parties shall send a new notice to the employer, person, corporation or institution withholding support specifying the correct amount to be withheld as a result of the change in circumstances.

SECTION 22. Tennessee Code Annotated, Section 36-5-703(d), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2) If the payment records of the clerk of the court or the department show that the obligor remains in arrears and is not in compliance with the consent order for repayment of the child support arrearage pursuant to subdivision (d)(1), the court, through the department, shall, in accordance with § 36-5-705, forthwith certify to each licensing authority which licenses the obligor that the obligor is not in compliance with an order of support.

SECTION 23. Tennessee Code Annotated, Section 36-5-901, is amended by redesignating current subdivision (a)(1)(A) as subdivision (a)(1), by redesignating subdivision (b)(1) as subdivision (b)(1)(A), and by transferring the existing language of current subdivision (1)(B) of current subsection (a) to current subsection (b)(1) as a new subdivision (b)(1)(B).

SECTION 24. Tennessee Code Annotated, Section 36-5-1001(a), is amended by deleting subdivision (a)(1)(C) in its entirety and by substituting instead the following:

(C) Notice of enrollment of a child for health care coverage upon a change of employers or as otherwise authorized pursuant to §§ 36-5-101(f)(2), 36-2-319, 36-5-501(a)(3) or 37-1-151.

SECTION 25. Tennessee Code Annotated, Section 36-5-1001, is amended by deleting the punctuation and word “; and” at the end of subdivision (a)(1)(I) and by substituting instead a semicolon (;), by deleting the period (.) at the end of subdivision (a)(1)(J) and by substituting instead a semicolon (;), and by adding the following new subdivisions to subdivision (a)(1) as follows:

(K) Review of civil penalties for failure to provide proper information for the distribution of child support payments pursuant to § 36-5-120; and

(L) Review of income assignment orders for medical coverage entered pursuant to § 36-5-501(a)(3).

SECTION 26. Tennessee Code Annotated, Section 36-5-1002(a), is amended by deleting subdivision (5) in its entirety and by substituting instead the following new subdivision (5):

(5) Review of income assignment orders pursuant to § 36-5-501 is limited to:

(A) For the issuance of the initial order or income assignment:

(i) The correct identity of the individual subject to the order; and

(ii) A mistake of fact.

(B) For the issuance of an income assignment due to a delinquency pursuant to § 36-5-501(b)(1)(B) or (D):

(i) The amount of support not paid; or

(ii) The timeliness of the support paid;

(C) For the addition of an amount ordered pursuant to § 36-5-501(b)(1)(C) to satisfy accumulated arrears, if the court has not already determined the amount of arrears, the reasonableness of the amount ordered paid on the arrears and, in the case of accumulated arrears, the period of time over which support is ordered to be paid;

(D) For the addition of an amount ordered pursuant to § 36-5-501(b)(1)(C) for medical support, if the court has not already determined the amount of medical support, the reasonableness of the amount of medical support ordered;

(E) For termination of an income assignment, that the conditions of § 36-5-503 have been met.

SECTION 27. Tennessee Code Annotated, Section 36-5-1002(a)(6), is amended by adding the language “upon either issuance of an order to provide health insurance coverage pursuant to § 36-5-501(a)(3) or” immediately following the language “health insurance coverage”.

SECTION 28. The Tennessee Code Commission is directed to add to Title 36, Chapter 5, Parts 20-29, the official comments of the National Conference of Commissioners on Uniform State Laws for the Uniform Interstate Family Support Act as they exist on the effective date of this act. Such comments as contained in the various sections of the Uniform Interstate Family Support Act shall be added at the respective corresponding sections as contained in Title 36, Chapter 5, Parts 20-29.

SECTION 29. Tennessee Code Annotated, Section 36-5-2602(a), is amended by deleting the language “in the county where the respondent resides” and by substituting instead the language “in the county with appropriate jurisdiction, and, if two counties have appropriate jurisdiction, in the county where the child resides”.

SECTION 30. Tennessee Code Annotated, Section 36-5-3002, is amended by deleting subsection (9) and by substituting instead the following new subsection (9) and by adding the following new subsection (10) and by re-numbering existing subsections (10)-(13) accordingly:

(9) "Request" means a statement of a requesting party seeking transfer of a custody or child support case to the court of another county.

(10) "Requesting party" means custodial parent, non-custodial parent or, in Title IV-D child support cases, the Department of Human Services or its contractor.

SECTION 31. Tennessee Code Annotated, Section 36-5-3003(b), is amended by deleting the language "The case may be transferred by the issuing court to a competent court of the county where the child or children reside if each of the following apply:" and by substituting instead the following language:

Upon receipt of a request, the case must be transferred by the clerk of the issuing court, without order of the court, to a court of competent jurisdiction in the county where the child or children reside if each of the following applies:

SECTION 32. Tennessee Code Annotated, Section 36-5-3004(1), is amended by deleting the language, "A case may be transferred by a party or by the department by sending a request for transfer to the transferor court. The request shall include the following information:" and by substituting instead the following language:

A case must be transferred by the clerk of the issuing court following a request by a requesting party sending the request for the transfer to the clerk of the transferor court. The request shall include the following information:

SECTION 33. Tennessee Code Annotated, Section 36-5-3004(6), is amended by deleting the word "appealed" and by substituting instead the word "contested".

SECTION 34. Tennessee Code Annotated, Section 36-5-3005(a), is amended by deleting the language "appeal of the request" in its entirety, and by substituting instead the language, "contest of the request", and is further amended by deleting the language, "appeal contesting the transfer", and by substituting instead the language "contest of the transfer".

SECTION 35. Tennessee Code Annotated, Section 36-5-3007(a), is amended by deleting the word "appeal" and by substituting instead the word "contest".

SECTION 36. Tennessee Code Annotated, Title 36, Chapter 5, Part 30, is amended by adding the following new section as Section 36-5-3008, and by re-numbering current Section 36-5-3008 as new Section 36-5-3009:

36-5-3008. Acceptance of transfer. - The transferee court shall accept the transfer and shall not have the discretion to refuse the transfer.

SECTION 37. Tennessee Code Annotated, Section 36-5-3110, is amended by deleting subsections (a) and (b) in their entireties and by substituting instead the following:

In cases not subject to the Centralized Collection and Disbursement Unit pursuant to § 36-5-116, when the clerk of the court of the registering county collects the

support which has been enforced by the court of the registering county pursuant to this part, the clerk shall send the support amount, less the statutory fee of the clerk, directly to the obligee, but the clerk shall not send the support amount to the issuing court from which the original order was issued and which was registered for enforcement pursuant to this part.

SECTION 38. Tennessee Code Annotated, Section 71-3-124(a), is amended by adding the following as a new subdivision (6):

(6)(A) Notwithstanding any other provision of law to the contrary, neither the Department of Human Services, nor any Title IV-D child support contractor of the department, nor any recipient of public assistance in this or any other state or territory, shall be required to demonstrate to a court or administrative tribunal in this state that the caretaker of the child for whom child support is sought is vested with any more than physical custody of child or children in order to have standing to petition for child support from the legal parent of the child or children for whom support is sought, or to seek enforcement or modification of any existing orders involving such child or children.

(B) Legal custody of a child to whom a child support obligation is owed shall not be a prerequisite to the initiation of any support action or to the enforcement or modification of any support obligation, whether or not the obligation has been assigned to this state or any other state or territory by operation of law.

SECTION 39. Tennessee Code Annotated, Section 36-5-1001(c), is amended by designating the existing language as subdivision (1) of subsection (c) and by adding the following language as a new subdivision (2):

(2)(A) Notwithstanding any other provisions of this part or any other law to the contrary, in counties having a population of not less than eight hundred twenty-six thousand (826,000) and not more than eight hundred and twenty-seven thousand (827,000) according to the 1990 federal census, any review of the administrative actions of the department shall not be heard by contested case hearing before the department, but shall be reviewed by the juvenile court of such county pursuant to the provisions of this part.

(B) Any administrative reviews of cases that are subject to an existing order of the juvenile court of such county pending on the effective date of this act that have not been heard by the Department of Human Services under the contested case provisions of Title 4, Chapter 5, Part 3, shall be transferred to such court by the department and shall be heard by the juvenile court of such county.

(C) Any further review of the court's decision involving such administrative actions shall be obtained by following the procedures for any appeals provided by law for the review of any other decisions of such court.

SECTION 40. Tennessee Code Annotated, Section 36-5-1002(a), is amended by adding the following as a new subdivision (14):

(14) Review of a civil penalty for failure to comply with the provisions of § 36-5-120 shall be limited to whether there is good cause for failure to comply with the provision of that section.

SECTION 41. Tennessee Code Annotated, Section 36-5-116, is amended by adding the following as an appropriately designated subsection:

(_) If, due to the fault of the Department of Human Services fiscal services unit, a properly identified current payment of child support that has an order properly entered into the Tennessee Child Support Enforcement System ("TCSES") is not disbursed within two (2) weeks of receipt of the payment by the department, the custodial parent may request, and the department shall promptly pay, an additional payment as provided for in this section. Such additional payment from the department shall be in an amount not to exceed ten percent (10%) of the amount actually paid toward current support that was delayed by the action of the Fiscal Services Unit, or fifty dollars (\$50.00), whichever is less. Such ten percent (10%) payment shall be derived from the department's budget without additional appropriation. Any cost incurred by the department to implement the provisions of this section shall be paid from the statutory fees paid to the department.

SECTION 42. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.


SECTION 43. The provisions of this act related to department payments for late disbursements shall become effective July 1, 2001, the public welfare requiring it. All other provisions of this act shall become effective upon becoming a law, the public welfare requiring it.

PASSED: June 7, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2000


DON CONQUIST, GOVERNOR